IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.75 of 2001

Reserved on 5.12.2007

Date of decision 7.12.2007

State of H.P. Appellant

Versus

Madan Singh Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.M.A.Khan Deputy Advocate General.

For the respondent: Mr.C.N. Singh, Advocate,

Rajiv Sharma,J.

The respondent was accused in Case No.17-1 of 2000 and he was prosecuted under Section 33 of the Indian Forest Act, 1927 in the court of Judicial Magistrate Ist Class, Chopal, District Shimla and was acquitted on 17.8.2000. The State has filed the present appeal against the acquittal of the respondent.

The brief facts as projected in the judgment of the trial court are that on 5.3.1999 while Forest Guard Sant Ram was patrolling in Dhar-Charri Dehat accused Madan Singh was found cutting six trees of deodar. It is further alleged that 12 logs from those six trees were being carried by the accused. The investigation of the case was handed over to Dulla Ram, who recorded statements of the witnesses under Section 161 Cr.P.C. The challan was put up in the court on 2.3.2000 after completion of the investigation.

The prosecution in order to prove its case had examined three witnesses. The statement of the accused was recorded under Section 313

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[1] Whether reporter of local papers is allowed to see the judgment? No.

Cr.P.C. The trial court acquitted the accused on 17.8.2000, hence this appeal against his acquittal.

Mr.M.A.Khan, learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He then contended that the trial court has not correctly appreciated the evidence led by the prosecution which has led to grave miscarriage of justice. Mr.C.N.Singh, learned counsel appearing for the respondent had supported the judgment of the trial court dated 17.8.2000.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

PW-1 Sant Ram has deposed that Dhar-Charri Dehat is U.P.F. According to him the accused was carrying 12 wooden karis which were converted from six deodar trees. Those karis were handed over on sapurdari to PW-2 Devia Ram. The police had not associated any independent witness from the nearby village Dhar-Charri Dehat even at the stage of preparing Damage Report Ex.PW1/A as well as while preparing sapurdarinama Ex.PW1/C. These two documents have not been signed by any independent witnesses. There are material contradictions in the statements of PW-1 and PW-2 which cause suspicion. PW-1 has stated that the Damage Report Ex.PW1/A was prepared by him in the presence of the accused as well as in the presence of PW-2 Devia Ram. PW-2 has deposed that the damage report was issued after the departure of the accused. He has stated that when he reached on the spot along with PW-1 accused was found standing near the heap of wooden timber and he then stated that as soon as he reached there the accused ran away from the spot. PW-1 has failed to state how many wooden karis could be converted from 3rd and 4th class trees of deodar.

The incident is dated 5.3.1999 but the investigation commenced only in the month of November, 1999 after a lapse of eight months. The statements of PW-1 and PW-2 were recorded only on 27.2.2000 after a

lapse of about one year. Resultantly, it is held that the prosecution has failed to prove its case against the accused. The prosecution has failed to prove that the accused was found cutting six deodar trees from Dhar-Charri Dehat on 5.3.1999. The prosecution has also further failed to prove that the accused was carrying 12 wooden karis from the spot on 5.3.1999. These conclusions have been drawn by this court after closely scrutinizing the statements of PWs 1,2 and 3.There are material contradictions in the statements of these three witnesses. The incident is dated 5.3.1999 but the investigation was started after eight months and the statements of the witnesses were recorded on 27.2.2000. This is a serious lapse on the part of the investigating agency.

Consequently, the judgment passed by the trial court calls for no interference. The appeal is accordingly dismissed. The bonds furnished by the accused are discharged.

December 7,2007(g) **(Rajiv Sharma), J.**